

# The Challenges of Police Accountability



## Method of Accountability Roadblocks to Accountability

### Prosecute officers who break the law

In state cases, there are many roadblocks to police accountability. First, other police officers typically investigate the wrongdoing. Second, a state prosecutor must decide to bring charges, but state prosecutors often have problematically close relationships with police because they rely on them for all cases. Both present major conflicts of interest. Third, the law requires the officer's decision to use force to be judged in the split second when the made the decision. This analysis is done without reflection on whether the police officer escalated the situation. Finally, jurors are often highly deferential to police even when prosecutors do bring charges.

Federal cases are also difficult because federal prosecutors typically cannot charge an officer with homicide or another typical crime. Instead they must charge an officer with violating civil rights which requires different types of proof.

### Discipline officers

Due process requires that certain public employees go through a process before they are disciplined, especially if they are fired. But police contracts and state laws often go far beyond due process requirements. Under the Minneapolis police contract, the department cannot even note misconduct unless the officer is formally disciplined making it hard to track continuous wrongdoing. When the police department wants to fire or demote an officer, the department cannot do so until officers a notice, factfinding, and hearing process—all of which take weeks. If the department does not follow the process, the officer can be reinstated even if the officer clearly engaged in misconduct. Therefore, except in very rare cases, the department cannot just immediately fire someone. After this process, police officers can then appeal via arbitration and often are reinstated by the arbitrator even when the department wants to fire the officer.

### Sue police officers individually

Police officers are typically sued in federal court in a § 1983 civil rights claim for violating a constitutional right, but the Supreme Courts has given officers a "qualified immunity" defense. Under qualified immunity, plaintiffs must prove that the officer violated a "clearly established" right, meaning that the plaintiff needs to point to a nearly identical case where a court already held that someone's rights were violated. Because no two cases are factually identical, this is often impossible even when the officer's actions are egregious.

### Sue police departments

Police departments can also be sued in a § 1983 civil rights claim. Again, the Supreme Court has created a defense for departments. Plaintiffs must prove that a department had a policy or custom of violating rights or where deliberately indifferent to the person's rights. Because police departments rarely have a written policy to violate rights and deliberate indifference is a very high standard, these claims also rarely succeed.

## What Can Be Done?

Pressure state and local policymakers to develop new, independent bodies to investigate when police officers are accused of breaking the law.

Pressure county prosecutors to file charges anytime police officers break the law, not just in high profile homicide cases.

When your local police department renegotiates its contract, pressure local policymakers to improve disciplinary provisions.

Pressure state legislators to update state laws on arbitration.

Congress is considering limiting qualified immunity. Pressure your member of the U.S. House of Representatives and your Senators to support these changes.

Congress can limit these defenses. Pressure your Representative and Senators in Congress to support these changes.

Created by Geoff Koslig, Marielos Cabrera, Mitch Stauch and Kevin Riach

**General Disclaimer:** This information is not meant as legal advice. You should consult with legal counsel about your particular situation.